

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Ulman Post Office
Ulman, Missouri

Docket No. A2011-39

PUBLIC REPRESENTATIVE'S REPLY COMMENTS

October 12, 2011

I. INTRODUCTION AND SUMMARY

A. Focus of Reply Comments

These Reply Comments reiterate the view expressed in the Public Representative's recent filing in Docket No. A2011-38 (Masonville Iowa): namely, that procedural and substantive due process is at the core of the law and regulations governing post office appeals; therefore, representation of "the interests of the general public" in these cases centers on whether the Postal Service has honored this principle.

Procedural due process is usually satisfied if the Administrative Record confirms that the Postal Service has followed certain relatively straightforward requirements, such as publicly posting a notice at the affected office, holding a community meeting, and distributing questionnaires. Substantive due process is provided if the rationale and representations memorialized in the Administrative Record reflect two hallmarks: transparency and accountability. Accuracy and completeness are subsumed within these concepts.

B. The Ulman Missouri Post Office

Ulman is a small community in southern Miller County, Missouri. Miller County is at the eastern edge of “Ozarks Country” and home to Bagnell Dam, an engineering feat which created the Lake of the Ozarks. It is about a half-hour drive from Ulman to Columbia Missouri, site of the University of Missouri’s main campus, and a short drive to Jefferson City, the Missouri state capital.

The Administrative Record in this case states that the Postal Service is proposing to close the Ulman Post Office, an EAS Level 11 office, and provide former patrons of this office with highway contract service operating out of Brumly. Brumly is about 5 miles from Ulman. Administrative Record, Item No. 18. As in most appeals of post office closings, the Postmaster position has been vacant for some time. In this situation, the Ulman postmaster retired on March 3, 2009; and an officer-in-charge has been managing the Post Office since then. *Id.*

The Postmaster Workload Information sheet states indicates that the Ulman Post Office serves 19 post office box holders, 107 intermediate rural boxes, 20 administrative highway contract/star routes, and 13 intermediate highway contract/star routes. Administrative Record, Item No. 8. There is no seasonal workload. *Id.*

C. Substantive Due Process is Lacking

In this case, a review of the Administrative Record¹ shows that the Postal Service met the requirements for public involvement in terms of certain standard steps, such as posting documents, holding a community meeting, and distributing questionnaires. Thus, there are no legitimate grounds for a remand on the basis of deficiencies in

¹ See Administrative Record filed by the Postal Service on August 18, 2011 and a companion document, United States Postal Service Notice of Filing, August 18, 2011.

procedural due process. However, there are two substantive due process shortcomings. The first one — failure to consider additional points raised in the Participant Statement — impairs substantive due process to such a degree that it warrants a remand on its own. In combination with the other shortcoming — failure to adequately document and explain building deficiencies — there is ample support for a remand or for the Postal Service, on its own initiative, to withdraw its proposal to close the Ulman Post Office.

II. SUBSTANTIVE SHORTCOMINGS

A. Failure to Fully Consider Petitioner's Claims

The first, and most significant, shortcoming in this case goes to fundamental concepts of accountability. Specifically, the Postal Service mistakenly asserts that the Petitioner² did not file a Form 61 or initial brief in support of the petition. United States Postal Service Regarding Appeal, September 27, 2011 (Postal Service Comments) at 1. However, the Petitioners did, in fact, file a Participant Statement, and did so in a timely fashion: the procedural schedule set out in Order No. 793 identifies September 7, 2011 as the filing deadline for this document.³ Commission records show that the Petitioners filed it about a week early, on August 30, 2011.⁴

Presumably, failure to consider the Participant Statement was inadvertent, but it is not harmless error. In fact, in many situations, it might constitute *prima facie* grounds for a remand. However, because the Postal Service proceeded to address some of the points that are common to both the Petition and the Participant Statement, it is

² It is standard Commission practice to name one petitioner as lead petition. As both Mr. and Mrs. McGowin have worked jointly on this appeal, the term "Petitioners" is used here.

³ Order No. 793, Notice and Order Accepting Appeal and Establishing Procedural Schedule, August 5, 2011. This document and others filed in this case may be accessed at www.prc.gov.

⁴ *Id.* at 5.

appropriate to consider whether the legal problems associated with the oversight are fully resolved. As discussed below, they are not.

Based on several conversations with the Petitioners, the undersigned Public Representative is personally aware of the effort the Petitioners and others put into preparing their Participant Statement, and of their sincere hope that this document, when reviewed by the Commission, would mean that the Ulman Post Office would remain open. In fact, because of Mr. McGowin's concern that longstanding plans for an out-of-town trip around the time of the filing deadline might interfere with the submission, he and his wife took extraordinary measures to ensure that the Participant Statement was received and accepted in the Docket Section. These measures included, among others, enlisting local computer backup and access to a fax machine. They also made plans to make confirming telephone calls to the Commission to ensure acceptance of their Participant Statement.

Second, a search of the Commission's electronic records for Docket No. A2011-39 confirms that the McGowin's Participant Statement is on file. It carries an official acceptance date of August 30, 2011. The Participant Statement is a two-page document consisting of a filled-in Form 61 (signed by Buster McGowin) with four listed concerns and a narrative statement (signed by Myna McGowin).

Thus, the Postal Service has addressed some, but not all, of the Petitioners' concerns. For example, the Participant Statement adds a concern about security of the mail for several churches. Participant Statement at 1. The Postal Service's responses to questionnaires address security for residential customers, but not for churches. The issues may be the same in some respects, but churches may receive many more shipments than residences that do not operate a small business out of the home; these shipments may be much larger than the ordinary residential shipment; and churches may be in locations that are both more prominent than many residences and that present fewer opportunities to temporarily shield the shipments from public view. Therefore, the record should address these issues.

The Participant Statement also pursues the issue of the accuracy of the Postal Service's economic savings estimate, asserting that there is a continuing leasehold obligation that has not been accounted for. In particular, it asserts: "The Post Office Building is currently under a newly signed lease, which has several more years left on it. Most of us have to honor our leases ... what about this lease?" *Id.* at 2. The Postal Service does not address this obligation or its impact on the savings estimate.

In addition, the Participant Statement, as discussed below, casts doubt on assertions that the poor condition of the building justifies a discontinuance study.

B. Lack of Transparency about Physical Conditions and their Impact on Operations at the Ulman Post Office

The second substantive shortcoming is a lack of transparency supporting a statement in the Discontinuance Study Request (Administrative Record, Item No. 1) regarding the absence of running water, reliance on a space heater, and lack of restroom facilities at the Ulman Post Office. Handicapped access may also be problematic.

The pro forma documentation for an Administration Record includes a placeholder for a Building Inspection Report and photos of deficiencies. However, there is no Building Inspection Report or photos to back up these statements in the Ulman Administrative Record — there is simply a statement on the designated sheet that there is no inspection report, nor any photos supporting alleged deficiencies. See Administrative Record, Item No. 6.

More importantly, there is no indication whether the water, restroom and handicapped access situations are recent developments, or are conditions that have been worked around satisfactorily for some time. Similarly, it is not clear what role a space heater plays: is this a code violation ... or simply "old school"? Moreover, the Petitioners claim: "The building is old, but is in good shape, it was sturdily made and has been kept up all these years. The inside has been remodeled recently" Participant Statement at 2.

Without transparency about the extent of the alleged physical deficiencies; how long each has existed; whether one or more problems can be remedied; and the cost and time to remedy them, the Administrative Record does not provide the Commission with a basis for accepting the Postal Service's representations that the Ulman Post Office is so decrepit that it should be closed.

Given the lack of transparency about one of the reasons for seeking a Discontinuance Study, the Commission should remand this case for further consideration by the Postal Service.

C. Effect on the Community

The Postal Service asserts that it has considered the effect on the community. This is based, in part, on the assertion that a community's identity derives from the interest and vitality of its residents and their use of its name. Postal Service Comments at 7. The "it's the people, not the place" theme has some truth to it, but the Petitioners also make a heartfelt case that for Ulman residents, "It's the people **and** the place." Many responses to questionnaires speak fondly of residents' attachment to the local Post Office and the community.

In short, while it is true that the Postal Service considered questionnaire responses, relatively few questionnaires were evaluated. By comparison, more than 100 persons signed a petition to keep the Ulman Post Office open. This speaks volumes to the interest the community has in maintaining an office. It is possible that the equivalent of the relatively modest economic savings the Service expects to generate from closing the Ulman Post Office may be lost in good will.

III. CONCLUSION

A review of the Administrative Record shows that the Postal Service has met many of its responsibilities in compiling its case; however, it failed to consider additional pertinent points raised in the McGowins' timely-filed Participant Statement. In some

instances, this omission may constitute harmless error; however, in this case, it means that important additional points raised in the Petitioners' Statement were not addressed. This is a deprivation of substantive due process. The Commission therefore should remand the case in its entirety to the Postal Service. A remand will instill greater confidence in the Postal Service's commitment to patrons of post offices that are candidates for closing and will not unduly burden the Postal Service.

Respectfully submitted,

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